

REMARKS

Amendments to the Specification

The specification has been amended herein to update the Related Applications paragraph and to reference the various parts of Figures 1-26. No new matter has been added.

Claim Amendments

Claims 12 and 14-19 are pending in the instant application. Claims 15-19 have been withdrawn from consideration. Claim 12 has been amended herein. Support for this amendment can be found throughout the specification, for example, in paragraph [0064] of the instant application as published, or in Figure 26. No new matter has been added.

Rejoinder

Applicants respectfully request that Claims 15-19, previously withdrawn as being directed to non-elected species, be rejoined herein. Claims 15-19 depend from and, thus, require all the limitations of Claim 12.

Double Patenting

Claims 12 and 14 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over various claims of copending U.S. Application Nos. 10/865,245 and 11/153,054.

As stated by the Examiner, this is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented. Please note that U.S. Application Nos. 10/865,245 and 11/153,054 are the later filed applications.

Therefore, if this provisional double patenting rejection is the only remaining rejection in the application, Applicants request that the Examiner withdraw the rejection in the instant [earlier filed] application thereby permitting this application to issue without need of a terminal disclaimer. (See MPEP §804(I)(B)). Applicants will then consider filing a Terminal Disclaimer or take any other action deemed necessary in the later filed, copending applications.

Claims 12 and 14 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 39 of copending U.S.

Application No. 11/270,805 ('805 application). According to the Office Action, although the conflicting claims are not identical, there are not patentably distinct.

Applicants respectfully disagree. Instant Claims 12 and 14 are drawn to an immunostimulatory oligonucleotide compound comprises an immunostimulatory dinucleotide of the formula YZ, wherein Y is a non-natural pyrimidine nucleoside and wherein at least one X, U or D is a recited immunostimulatory moiety. Whereas Claim 39 in the '805 application is directed to an immunostimulatory oligonucleotide compound, comprising an immunostimulatory dinucleotide of formula 5'-pyrimidine-purine-3', wherein the pyrimidine is a natural or non-natural pyrimidine nucleoside and the purine is a natural or non-natural; and two accessible 5' ends (emphasis added). As such, these claims are patentably distinct. Reconsideration and withdrawal of the rejection are respectfully requested.

Rejection of Claims 12 and 14 Under 35 U.S.C. §102(e)

Claims 12 and 14 are rejected under 35 U.S.C. §102(e) as being anticipated by Schwartz (Application No 10/365,678).

Claim 12 has been amended herein to recite that immunostimulatory oligonucleotide compound comprises an immunostimulatory dinucleotide of the formula YZ and wherein at least one X, U or D is a recited immunostimulatory moiety. As Schwartz fails to teach the combination of a modified immunostimulatory dinucleotide and an immunostimulatory moiety from the group of recited moieties, Claim 12, as amended, is not anticipated by Schwartz. Dependent Claims 14-19 incorporates all of the limitations of Claim 12, and are also not anticipated by Schwartz. Reconsideration and withdrawal of the rejection are respectfully requested.

Interview Summary

Applicants would like to thank Examiner Horning for participating in the telephonic interview on October 9, 2007. During the interview the merits of the Schwartz disclosure and claims 15-19 were discussed; however, an agreement was not reached. Therefore, Applicants submitted this response to the Final Office Action.

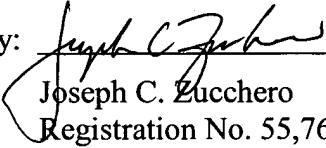
CONCLUSION

In view of the above amendments and remarks, it is believed that all claims are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

Respectfully submitted,

Dated: December 19, 2007

Keown & Zuccheri, LLP
500 West Cummings Park
Suite 1200
Woburn, MA 01801
Telephone: 781-938-1805
Facsimile: 781-938-4777

By: 
Joseph C. Zuccheri
Registration No. 55,762